

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97373; File No. SR-NYSEARCA-2023-32)

April 25, 2023

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the NYSE Arca Options Fee Schedule

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 18, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (“Fee Schedule”) regarding fees for equipment for the Trading Floor. The Exchange proposes to implement the fee change effective April 18, 2023.⁴ The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Fee Schedule on April 6, 2023 (SR-NYSEARCA-2023-21) and withdrew such filing on April 18, 2023.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule regarding Market Maker podium fees to reflect the availability of new equipment for Market Makers’ use on the Trading Floor.

The Exchange proposes to implement the rule change on April 18, 2023.

Currently, the Exchange equips each Market Maker podium with four 23” monitors. Market Makers may request up to two additional monitors per podium for a monthly surcharge of \$100. In addition, Market Makers currently have the option to upgrade the 23” monitors provided by the Exchange to 25” or 27” monitors for a one-time surcharge of \$200 or \$300 per monitor, respectively.⁵

The Exchange now proposes to offer Market Makers an additional podium monitor upgrade option. Specifically, the Exchange proposes to modify the Fee Schedule to provide that

⁵ See Fee Schedule, NYSE Arca OPTIONS: FLOOR and EQUIPMENT, MARKET MAKER PODIUM FEES. The Fee Schedule also provides that podia are only available to Market Makers with an active OTP (i.e., Market Makers that have only a Reserve OTP are ineligible for podia). In addition, each Market Maker on the Trading Floor may have no more than four (4) total podia and, each Market Maker in a given Trading Crowd, may have not more than two (2) podia, or eight (8) monitors. *Id.* The Exchange does not propose any changes to these aspects of Market Maker podium fees.

Market Makers may upgrade their podium monitors to a 32” size for a one-time surcharge of \$600 per monitor. This proposed change would offer Market Makers the option to upgrade their podium monitors to a newly available larger size, which the Exchange believes would afford Market Makers additional flexibility in the configuration of their podia space. The Exchange notes that it established the current fees relating to Market Maker monitors in connection with the relocation of the Trading Floor to a new facility.⁶ The proposed change would support fair and efficient use of Trading Floor space, as the Exchange believes that the available space on the Trading Floor can accommodate an additional monitor upgrade option for Market Makers.

The Exchange also proposes to amend the Fee Schedule to eliminate the current descriptions of the monitor sizes as “standard,” “large,” or “extra-large” and instead state the sizes of the available monitors (e.g., 23”, 25”, and so forth). The Exchange believes this proposed change would add specificity and transparency to the Fee Schedule with respect to the sizes of the monitors available to Market Makers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act, in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed change is reasonable, equitable and not unfairly

⁶ See Securities Exchange Act Release No. 84874 (December 19, 2018), 83 FR 66818 (December 27, 2018) (SR-NYSEArca-2018-90) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule in Conjunction with Relocating the Trading Floor to a New Trading Facility).

discriminatory for the following reasons. First, the proposed fee for the 32” monitor upgrade is reasonable, as the Exchange believes it is relatively proportional to the current fees for upgrades to monitors of smaller sizes and would support the existing cost structure designed to provide Market Makers with flexibility in configuring their Floor space consistent with their own business needs (i.e., the cost structure will continue to allow a Market Maker to utilize only one podium with additional and/or upgraded monitors to facilitate additional personnel operating in the podium, as opposed to paying for multiple podiums). Second, the proposed change is equitable because it would provide for the same fee for all Market Makers that wish to exercise the option to upgrade their podium monitors to the newly available 32” size. Market Makers are not required to upgrade their podium equipment, but all those that choose to do so will be subject to the same fees. The Exchange also notes that the proposed fee for the newly available 32” monitor would not impact any of the existing podium fees. Finally, the Exchange believes the proposed change is not unfairly discriminatory because it would apply to all Market Makers on an equal and non-discriminatory basis. Any Market Maker can choose to upgrade its podium monitors as suits its business needs, and the same surcharge, based on the size of the upgraded monitor, would apply to any such Market Maker. The Exchange further believes that the proposed change to replace the monitor size descriptors with the monitors’ dimensions is reasonable, equitable, and not unfairly discriminatory because the change would add specificity and transparency to the Fee Schedule and would apply equally to all similarly situated market participants.

The Exchange also believes the proposed Floor Fees are reasonable, equitable, and not unfairly discriminatory because OTP Holders can choose whether to participate on the Exchange solely through electronic means, or with a presence on the Trading Floor. The proposed change,

which would offer Market Makers added flexibility with respect to the configuration of their podium monitors, is designed to continue to encourage market participants to conduct business on the Trading Floor. Orders brought to the Trading Floor could benefit all market participants by facilitating more trading opportunities.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change does not raise any competitive issues, as it is designed to reflect the availability of optional new equipment for Market Maker use on the Exchange Trading Floor. Market Makers already have the option to upgrade their podium monitors from those provided by the Exchange to a larger size, and the proposed change would simply offer Market Makers an additional upgrade option that would, like the current upgrade options, be subject to a one-time surcharge. The Exchange believes the proposed change would afford Market Makers greater flexibility with respect to the configuration of their podiums and could allow them to make more efficient use of their Trading Floor space.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁷ of the Act and subparagraph (f)(2) of Rule 19b-4⁸ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2023-32 on the subject line.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(2).

⁹ 15 U.S.C. 78s(b)(2)(B).

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2023-32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to File Number SR-NYSEARCA-2023-32, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Sherry R. Haywood

Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).